
PERFORMANCE-BASED LICENSING AND MONITORING

A Guidance Document for Management of Licensing Caseloads

INTRODUCTION

Performance-based Licensing and Monitoring is a system for managing the licensing caseload. The goals of the system are:

1. To provide a structure for assessing facility performance that is used statewide;
2. To enhance customer protection;
3. To use staff time most effectively;
4. To define the minimum level of regulatory oversight required for each facility;
5. To identify facilities that need special attention for risk reduction actions.

This system is applicable to the following programs:

Child Day Center Systems

Child Day Centers

Family Day Homes

Independent Foster Homes

Family Day Systems

Child Placing Agencies

Child Caring Institutions

Assisted Living Facilities

Adult Day Care Centers

Because the programs to which this system applies differ in areas including, but not limited to, populations served, goals, objectives, facilities and services, it is reasonable to expect some variation in the outcome of application of these guidelines. Inspectors are expected and encouraged to use these guidelines along with standards, policy interpretations and professional judgement in reaching conclusions.

Inspectors will need to inform licensees of their performance profile assignment along with the reason/justification for assignment. This information will not be shown on the face of the license. If a disagreement arises regarding the assignment of a performance profile to a facility, Problem Solving Conference procedures are followed.

DEFINITIONS

The following words and terms when used in this guide have the following meanings unless the context indicates otherwise:

Performance Profile - description of a facility's performance level, including general characteristics, program management and compliance picture. It states the frequency of visits and the type/duration of the licensure period.

Performance Profile Descriptors

"C" - describes a new facility to which a conditional license is issued in order to permit the applicant to demonstrate compliance with specified standards.

"D" - describes a facility to which a license has been refused after receipt of an original or renewal application.

"P" - describes a facility to which a provisional license is issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the standards.

"R" - describes a facility where the license is terminated (revoked) during its effective dates because of findings of serious violations.

"1" - describes a facility whose activities, services, management and overall performance level substantially comply with the standards and regulations. These facilities receive a 1 year license.

"2" - describes a facility whose activities, services, management and overall performance level on a sustained basis comply with minimum standards and exceed minimum standards in other areas. These facilities receive a 2 year license.

"3" - describes a facility whose activities, services, management and overall performance level routinely substantially exceeds the minimum standards. These facilities receive a 3 year license.

Exceeds minimum standards - used to describe facility performance. Facilities can exceed individual standards that contain this potential, can exceed in areas of standards, or can exceed in overall performance. Programs and services provided to the populations served go beyond the basic care, program and services required by the standards and regulations.

Hard variables - objectively measurable criteria; quantitative in nature.

Inspection visit - a monitoring inspection; a complaint investigation inspection; an inspection to conduct a new or renewal study.

Risk – an expression of possible harm in terms of likelihood and severity (See Risk Assessment guidance document).

Soft variables - criteria which are less susceptible to measurement, but which exist and which affect licensing decisions; qualitative in nature.

Studies

New Study - an evaluation against standards of a facility that has not been previously licensed.

Renewal Study - an evaluation conducted at the expiration of a license or over the period of licensure; used to determine continued licensure.

Substantial Compliance - while there may be violation of a standard or standards which pose little risk, compliance exists with nearly all standards when taken as a whole.

PERFORMANCE PROFILE

A facility performance profile assessment is based upon the following hard variables:

1. Number and nature of founded complaints, including complaints in which compliance could not be clearly determined;
2. Compliance issues, such as number of violations during monitoring and/or renewal visits, pattern of identical or similar violations from one inspection to the next and ability to maintain compliance over time;
3. Level of risk to populations in care, etc.

The assessment is also based upon soft variables, which include, but are not limited to:

1. Willingness or ability to comply, failure to maintain corrective action, failure to provide long range/systemic correction, goes for quick fixes, etc.
2. May not accept or understand the connection between standards, separately or collectively, and risk reduction (e.g., discounts the importance of compliance as protection).
3. Lack of fundamentally sound concept of "why" and "how" to establish an internal system to monitor and manage facility operations.

A performance profile is designated at the point of initial issuance. A facility's profile may be changed by the licensing administrator following any inspection visit. When this occurs, the licensee is informed and supporting documentation is made in the case record and on the automated system.

When a facility's profile changes at times other than license renewal, the visit schedule for the new performance level is followed. When the change results from violations found during complaint or monitoring visits, the Inspection Summary will contain a statement to that effect. (Example: The performance level of this facility is lower than when the license was issued.) Inclusion of this statement on the Inspection Summary serves as documentation for the provider that the facility's performance level has changed since issuance of the license. In addition to the statement on the Inspection Summary, the licensing administrator may, for reinforcement, notify the facility in writing when their level of performance decreases.

Movement from one level to another requires evaluation of a facility's performance against all elements that describe that profile. A drop in compliance may not require an immediate change in profile. In all instances, however, decisions should be guided by what is in the best interest of those in care. Focus on those in care is consistent with our mission and care outcomes are central to a facility's performance.

FORMS AND THEIR USE

The following documents shall be completed and retained in the case record for each of the types of inspections listed below:

Renewal Study

1. Violation Notice - when violations of standards are found
2. Inspection Summary
3. Compliance Review/Record Form including Supplement
4. Overall Evaluation Form
5. Cumulative History Form

Monitoring Inspection

1. Violation Notice - when violations of standards are found
2. Inspection Summary
3. Compliance Review/Record Form including Supplement
4. Cumulative History Form

Complaint Investigation

1. Violation Notice - when violations of standards are found
2. Inspection Summary outlining areas reviewed for unfounded complaints
3. Complaint Report and Findings
4. Cumulative History Form
5. Notation on Compliance Review/Record Form

The Overall Evaluation Form is completed at each issuance and also when the performance profile changes. The Management Assessment/Profile is a brief description of the observations and/or evidence that shows how facility management functions. The Performance Summary is a summary of facility compliance including risk areas and complaints if any. Licensure Decision Justification is a brief description of the primary factors that lead to the decisions about facility assessment and that support the decision about licensure. The Inspector Activity Plan includes intended follow-up actions on the part of the inspector to evaluate performance.

The Cumulative History Form is completed after each inspection visit. The purpose of the form is to provide a historical picture of the facility's performance, including areas and patterns of noncompliance, as well as improvements.

Inspection Summary is completed for all visits in which no violations are found and the areas of the regulations reviewed during the inspection must be documented on the summary. Also,

consultation and/or technical assistance provided at any visit must be documented on an Inspection Summary. Additionally, this summary can be used to provide documentation of discussions and can include recognition of positive performance and program improvements, if appropriate. The summary must show if there were violations or no violations at the inspection.

PERFORMANCE PROFILE "C"
(Conditional)

1. These facilities have the following general characteristics:
 - a. New facilities with new sponsors;
 - b. New facilities with previously licensed sponsors; and
 - c. Previously licensed facilities with new sponsors
2. Facility Program Management - not applicable
3. Compliance Picture - meets regulations sufficient to begin operation and has a plan for meeting those not yet implemented
4. Inspections/Duration of License:
 - a. One announced or unannounced monitoring inspection within 2 months of initial license issuance;
 - b. Visit(s) to determine early compliance, if appropriate; and
 - c. Receives a conditional license

The goals of the conditional period are for Division of Licensing Programs staff:

1. To strengthen understanding of and a positive attitude toward the standards and how they promote protection for the person in care;
 2. To establish a positive working relationship with the licensee;
 3. To encourage and promote prevention-thinking (systemic approach) in management; and
 4. To evaluate the facility's compliance performance.
5. Additional Instructions for Licensing Staff:
- a. If a facility requests and is found eligible to receive a new license based on early compliance, only a 1 year license may be issued. The performance profile is changed to 1.
 - b. When a license is issued at the end of a full 6-month conditional licensure period, the facility may be issued a 1 year license.

PERFORMANCE PROFILE "3"
(Three year license)

1. These facilities have the following general characteristics:
 - a. Demonstrated performance in assuming full/independent responsibility for achieving and exceeding compliance for approximately 24 months.
 - b. Routinely substantially exceed the minimum standards.
 - c. A clearly developed program focus, along with the planning and resources needed to carry this out.
2. Facility management exhibits exceptional management skills as evidenced by such factors as:
 - a. Established and implemented standing routines to systematically manage and monitor basic operations, including preventive maintenance, staff development, etc.;
 - b. Effective knowledge of regulations and why they exist; clear understanding of the interrelatedness of standards, i.e., a holistic view of the services of the facility;
 - c. Anticipates and plans for changes in operations such as, but not limited to, changes in types of clients served and changing needs of all children/adults in care; expansion of operations, etc.; and
 - d. Usually has a network of staff development and other resources that include but go beyond those offered by the Division of Licensing Programs.
3. Compliance Picture is such that:
 - a. A consistently high level of compliance is maintained
 - b. Violations are infrequent and, if they occur, do not pose a threat to the health and safety of those in care
 - c. Violations do not form pattern(s)
 - d. Violations are reflective of a minor lapse in practice
 - e. Complaints are rarely received; complaints received are generally unfounded; if violations exist(ed), they are not serious, they are corrected promptly and are frequently corrected prior to investigation;
 - f. Initiates contact on an as needed basis to request consultation/technical assistance or to advise of significant management changes and problems.

4. Inspections/Duration of License:

- a. Two (2) inspection visits each fiscal year, both unannounced unless otherwise directed or documented;*
- b. Receives a 3 year license.

* NOTE: Unannounced studies are conducted in all facilities except Child Day Centers and Family Day Homes. In the fiscal year when the renewal study is unannounced, it may be counted toward meeting the requirement for 2 inspections. 1999 legislation requires only one unannounced inspection of assisted living facilities holding a three year license.

PERFORMANCE PROFILE "2"
(Two year license)

1. These facilities have the following general characteristics:
 - a. Demonstrated performance in assuming responsibility for achieving and maintaining compliance for approximately 18 months.
 - b. Routinely meets all standards and exceeds others, including health, safety and care areas of the standards, on a sustained basis;
 - c. A clearly developed program focus, along with the planning and resources needed to carry this out.
2. Facility management exhibits good management skills as evidenced by such traits/factors as:
 - a. A basic system to manage and monitor operations; this system generally addresses all problems, but may lack the consistency that is typically found in Profile "3" facilities, resulting in occasional breakdowns;
 - b. Demonstrated willingness/ability to correct and manage corrections;
 - c. Good knowledge and understanding of licensing standards; appreciation for the linked nature of standards, or the various services of the facility, but not as comprehensive as in Profile "3" facilities; and
 - d. Utilizes available training and consultation services to enhance/improve care.
3. Compliance picture is such that:
 - a. A high level of compliance is maintained;
 - b. Violations seldom recur and do not pose a threat to the health and safety of persons in care.
 - c. If patterns of violations exist they are reflective of a minor lapse in practice or change in key staff;
 - d. Complaints received may be founded; violations, once cited, are promptly corrected and are usually sustained.
4. Inspections/Duration of License:
 - a. Two (2) inspection visits each fiscal year, both unannounced unless otherwise directed or documented*
 - b. Receives a 2 year license.

* NOTE: Unannounced renewal studies are conducted in all facilities except Child Day Centers and Family Day Homes. In the fiscal year when the renewal study is unannounced, it may be counted toward meeting the requirements for 2 inspections.

PERFORMANCE PROFILE "1"
(One year license)

1. These facilities have the following general characteristics:
 - a. Substantially complies with the standards and regulations;
 - b. Complies with standards and regulations prior to the expiration of a conditional license resulting in replacement of the conditional license with a 1 year license,
 - c. Complies with minimum standards prior to the expiration of a provisional license resulting in replacement of the provisional license with a 1 year license.
2. Facility management exhibits adequate management skills as evidenced by such factors as:
 - a. General concept of why and how to establish an internal system to monitor and manage operations; willingness to maintain compliance; planning sometimes driven by responding to citations;
 - b. General familiarity and/or understanding of licensing standards, the interplay of the various standards and the risks being addressed. The licensee may see parts rather than wholes in meeting standards;
 - c. Some interest and participation in training programs and the use of consultation resources.
3. Compliance picture is such that:
 - a. Substantial compliance with standards is maintained;
 - b. Violations overall represent no more than a low likelihood of moderate risk to persons in care;
 - c. Complaints may contain some founded items; violations cited are corrected within the set time frames.
4. Inspections/Duration of License:
 - a. Two (2) inspection visits each fiscal year, both unannounced unless otherwise directed or documented;*
 - b. Receives a 1 year license.

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NOTE: Unannounced renewal studies are conducted in all facilities except Child Day Centers and Family Day Homes. In the fiscal year when the renewal study is unannounced, it may be counted toward the Code requirements for inspections. Three inspections each fiscal year are required for assisted living facilities holding a one year license. Facilities that receive a 1 year license as a result of early compliance must have at least 1 unannounced inspection during the additional months added to the licensing period.

PERFORMANCE PROFILE “P”

(Provisional License)

1. These facilities have the following general characteristics:
 - Temporarily unable to comply with the standards and regulations.
2. Facility management does not, for a short-term period, consistently exhibit adequate management skills.
3. Compliance picture is such that:
 - a. A low level of compliance is maintained;
 - b. Violations are frequent and recurring;
 - c. Violations form a widespread pattern;
 - d. Noncompliances represent moderate to serious risk to those receiving care;
 - e. Complaints are often founded; and
 - f. Violations are corrected during the licensure period.
4. Inspections/Duration of License:
 - a. One (1) unannounced inspection at least every other month;
 - b. Receives a provisional license;
 - c. Licensing Administrator visits on at least 1 unannounced inspection.

NOTE: Refer to Profile “1” if facility early complies

5. Additional Guidance for Licensing Staff:
 - a. The licensing administrator will notify the Operations Manager of all Profile “P” assignments, giving the date of the decision.
 - b. At the time of each inspection, the facility will be reviewed by the licensing inspector to determine if continued licensure is appropriate.
 - c. Unless some clear indication of progress is present within 3 months of assignment, the licensing administrator should call the licensee for a conference to help determine whether continued licensure is appropriate. At each inspection, licensing staff will evaluate for any signs of increased risk to persons in care.

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- d. There will be a written understanding between licensing staff and facility management regarding necessary improvements, expectations and possible outcomes. These necessary improvements, expectations, and possible outcomes will be documented (e.g., Corrective Action Notice and Plan or narrative and confirmation letter to licensee to follow up) in the case record.
 - e. The Operations Manager will be provided a written update on the progress of Profile “P” facilities.
 - f. The facility should improve within 6 months so it demonstrates a higher performance level and substantially complies with the minimum standards. If a facility fails to achieve substantial compliance so a one year license can be issued, a recommendation for negative action will be prepared and forwarded to the Operations Manager.

PERFORMANCE PROFILE “D”/”R”

(Denial or Revocation)

1. These facilities have the following general characteristics:
 - a. With reinforcement, consultation and guidance, unable or unwilling to meet minimum standards; or
 - b. Violations represent serious to extreme risk to persons in care.
2. The facility management is either unable or unwilling to act to correct violations, to minimize or prevent their reoccurrence in the future. Performance Profile may include:
 - a. Lack of any systemic design for monitoring and managing operations. The facility seems unable or unwilling to develop such systems even after prompting. Staff and programs are disorganized;
 - b. A lack of familiarity and/or understanding of licensing standards. The facility does not understand the risks in care giving or understand that the purpose of standards is to reduce risks;
 - c. Weak or ineffectual steps are taken to correct or prevent violations. In some instances, violations remain uncorrected or corrections are not sustained;
 - d. A lack of prior planning for changes in operations, such as types of populations in care, expansion of operations, etc.;
 - e. A lack of anticipation of and sensitivity to on-going changes in the existing population served.
3. The compliance picture is such that permitting the facility to continue to operate presents unacceptable risk to the well-being of those in care.
 - a. A low level of compliance is maintained;
 - b. Violations are frequent and recurring;
 - c. Complaints are founded; violations are ineffectively corrected or not corrected at all.
4. Inspections:
 - a. Complaint visits will be made; and

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- b. Monitoring inspections to assure protection of persons in care, provision of services, and assessment of risks will be made at least monthly during the adverse action process.
 - c. The Operations Manager and the Assistant Attorney General will be informed of any increased risk during the adverse action process.
 - d. If risk factors indicate a need to petition for injunction to close the facility during the appeal, the Division Director must be advised at once.
5. Additional Guidance for Licensing Staff:
- a. During monitoring or complaint investigation visits, staff will focus on issues of the complaint and issues related to the intermediate sanction, denial or revocation to assure there is no further increase in risk.
 - b. Noncompliances found during these visits will be documented and discussed with the licensee.
 - c. The Operations Manager and any assigned agency representative for the appeal must be promptly advised of the findings of the visit(s).
 - d. Technical assistance related to facility performance and/or noncompliance issues may continue.

**PERFORMANCE-BASED LICENSING AND MONITORING
PERFORMANCE PROFILE GRID**

	C	3	2	1	P	R/ D
GENERAL CHARACTERISTICS	New facilities with new sponsors; previously licensed facilities with new sponsors; new facilities with previously licensed sponsors.	Demonstrated performance in assuming full/independent responsibility for achieving/exceeding compliance for approximately 24 months; routinely substantially exceeds minimum standards.	Demonstrated performance in assuming responsibility for achieving and maintaining compliance for at least 18 months; routinely meets all standards and exceeds others including key health, safety and quality indicators on a sustained basis.	Substantially complies with standards and regulations. Complies with minimum standards prior to expiration of conditional or provisional resulting in replacement with 1 year license.	Temporarily unable to comply with the standards and regulations.	With reinforcement, consultation and guidance, unable or unwilling to meet minimum standards or noncompliances represent serious to extreme risk to persons in care.
FACILITY PROGRAM MANAGEMENT	Not applicable.	Established and implemented standing routines to systematically manage and monitor basic operations; effective knowledge of regulations and why they exist; anticipates/plans for changes in operations; populations, etc. Usually has network of staff development and other resources that goes beyond those offered by DLP.	Basic systems in place to manage and monitor operations; demonstrated willingness/ability to correct and manage corrections; good knowledge and understanding of licensing standards; utilizes available training and consultation services to enhance/improve operations.	General concept of why and how to establish an internal system to monitor and manage operations; willingness to maintain compliance; general familiarity and/or understanding of regulations; planning sometimes driven by responding to citations.	Facility management does not, for a short-term period, consistently exhibit adequate management skills.	Unorganized; lack of understanding of standards and risks in care giving; unwillingness/inability to plan/anticipate; violations frequently not corrected; corrections not significant.
COMPLIANCE PICTURE	Meets regulations sufficient to begin operation and has a plan for meeting those not yet implemented.	Consistently high level of compliance; infrequent violations; violations are reflective of minor lapse in practice and do not pose threat to health and safety of those in care; violations do not form pattern(s); complaints are rarely received and are generally unfounded; if violations exist(ed) are frequently corrected prior to investigation. Initiates contact on as needed basis to request consultation/technical assistance or to advise of significant management changes and problems.	High level of compliance; violations seldom recur and do not pose a threat to health and safety of those in care; if patterns, they are reflective of minor lapse in practice or change in key staff, complaints may be founded. Violations, once cited, are corrected promptly and are usually sustained.	Maintains substantial compliance with the standards; violations overall represent no more than a low likelihood of moderate risks to persons in care; complaints may contain some founded items; violations cited are corrected within the set time frames.	Low level of compliance; frequent and recurring violations which form widespread patterns of noncompliance; noncompliance represents moderate to serious risk to those receiving care; complaints are often founded; violations are corrected during the licensure period.	Low level of compliance; frequent and recurring violations; complaints are founded; violations are ineffectively corrected or not corrected at all. Permitting facility to continue operation presents an unacceptable level of risk to well-being of those receiving care; no reasonable assurance compliance picture will improve.
INSPECTIONS/ DURATION OF LICENSE	One (1) announced or unannounced monitoring inspection within 2 months of initial issuance; inspections to determine early compliance, if appropriate. Receives a conditional license.	Two (2) inspection visits each fiscal year, both unannounced unless otherwise directed or documented. Receives a 3 year license. 1999 legislation requires one inspection each fiscal year to ALFs on a 3 year license.	Two (2) inspection visits each fiscal year, both unannounced unless otherwise directed or documented. Receives a 2 year license.	Two (2) inspection visits each fiscal year, both unannounced unless otherwise directed or documented. Receives a 1 year license. 1999 legislation requires three inspections each fiscal year to ALFs on a 1 year license.	One (1) unannounced inspection at least every other month; LA visits facility on at least 1 unannounced inspection. Receives provisional license.	Complaint inspections; monitoring inspections at least monthly during adverse action period.

*This grid is to accompany the Performance-based Licensing and Monitoring